

### REMARKS/ARGUMENTS

Reconsideration is requested. Claims 21-26 are currently pending. Responsive to the Office Action of December 14, 2007, the Examiner's comments and the cited art have been noted and studied. For reasons to be set forth in detail below, it is respectfully submitted that the present application is in condition for allowance, and such action is requested.

Independent claims 21 and 26 have been amended to recite that "the homogeneous surface modification layer renders the surface of the at least one of said first and second metallic electrodes stably hydrophilic" (see, for example, page 5, lines 26-26 of the original disclosure).

It is respectfully submitted that the amendments above are supported by the specification, claims, abstract of the disclosure, and drawings as originally filed, and that no new matter has been added.

#### Claim Rejections under §103

The subject matter of claims 21-23 and 25-26 was rejected under 35 USC §103(a) as obvious over U.S. Patent No. 5,834,224 by Ruger et. al. (hereinafter "Ruger") in view of U.S. Patent No. 6,306,584 by Bamdad (hereinafter "Bamdad").

Ruger, as understood, describes an electrochemical sensor that has a "diluted" monolayer of enzyme binding molecules (see, for example, col. 2, lines 33-35 and 45-51 of Ruger). Ruger notes that such a diluted layer can consist of a "single type of molecule," but that the surface is not completely occupied (see, for example, col. 3, lines 28-32 of Ruger). Note also that the monolayer of Ruger is carefully configured to provide an enzyme linkage and that Ruger is silent with respect to providing a hydrophilic surface (see, for example, col. 3, lines 48-57 and 62-67 of Ruger).

Applicants' understanding of Bamdad was discussed in their previous Response of June 13, 2006. In particular, Applicants note that Bamdad describes a layer suitable for capturing a biological molecule (such as nucleic acid strands) for determination thereof (see, for example, col. 9, line 66 through col. 10, line 2 of Bamdad) and not for providing stable hydrophilicity.

Amended independent claims 21 and 26 recite that "the homogeneous surface modification layer renders the surface of the at least one of said first and second metallic

electrodes stably hydrophilic." Homogeneous surface modification layers that render a surface stably hydrophilic are not obvious over films adapted for capturing biological molecules (as in Bamdad) or linking enzymes (as in Ruger).

For at least the foregoing reasons, Applicants respectfully submit that independent claims 21 and 26 are allowable under 35 U.S.C. §103(a). Since claims 22-25 depend from and further limit independent claim 21, they are allowable for at least the same reason.

#### Double Patenting Rejection

The subject matter of claim 26 was rejected on the ground of nonstatutory obviousness-type double patenting over claim 1 of U.S. Patent No. 6,716,577 in view of Bamdad and U.S. Patent No. 5,869,001 to Backhaus et al. Upon allowance, Applicants are prepared to file a terminal disclaimer should the allowed claims so warrant.

#### CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance and applicants earnestly solicit early examination on the merits and issuance of a Notice of Allowance. Should the Examiner believe that any additional information or amendment is necessary to place the application in condition for allowance, he is urged to contact the undersigned Attorney via telephone at 408-956-4790, or facsimile number 408-956-4404.

The Commissioner is hereby authorized to charge any required fees due in connection with this submission, including petition and extension of time fees, and to credit any overpayment to Deposit Account No. 10-0750 (Docket No. 10-0750/LFS0097USDIV/MM) (Johnson & Johnson).

Respectfully submitted,

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